

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:15-CV-403-RJC-DSC**

ALBERT YALE, et al.,)	
)	
Plaintiffs,)	
)	<u>MEMORANDUM AND RECOMMENDATION</u>
v.)	
)	
COMMUNITYONE BANK, N.A.,)	
)	
Defendant.)	

THIS MATTER is before the Court on “Defendant CommunityOne Bank N.A.’s Motion to Dismiss Plaintiffs’ First Amended Complaint,” Doc. 31, filed on October 19, 2016, and the parties’ associated briefs, Docs. 32, 33 and 34.

Having fully considered the arguments, the record, and the applicable authority, the undersigned respectfully recommends that Defendant’s Motion to Dismiss be denied, as discussed below.

Plaintiffs filed their initial Complaint, Doc. 1, on August 31, 2015 alleging North Carolina statutory and common law claims as well as a federal RICO claim against Defendant. Defendant moved to dismiss the Complaint. On August 10, 2016, the undersigned issued a Memorandum and Recommendation (“M&R”), Doc. 21, recommending that Counts IV, V, VII and VIII be dismissed for failure to state a claim for relief.¹ The M&R recommended that the Fiduciaries Act claims in Counts I-III of the Complaint not be dismissed at this stage of the proceedings and found that “Plaintiffs’ knowledge and the reasonableness of their due diligence necessitate fact-intensive

¹ Plaintiffs voluntarily dismissed Count VI of the Complaint on December 28, 2015. See Doc. 19.

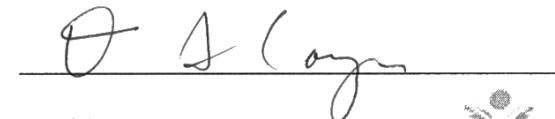
inquiries that would be better resolved at the summary judgment stage or, if necessary, at trial.” Doc. 21 at 7 (citations omitted).

On August 24, 2016, Defendant filed its Objections to the M&R. Doc. 22. Plaintiffs did not object to the M&R but filed a “Motion for Leave to File Amended Complaint” Doc. 23. This Motion was granted in part and denied in part by the undersigned on September 27, 2016, Doc. 28, resulting in the filing of the First Amended Complaint, Doc. 30. The First Amended Complaint contains two claims under the Fiduciaries Act.

The current Motion to Dismiss merely re-asserts the arguments previously considered by the undersigned in the M&R issued on August 10, 2016, Doc. 21. For the reasons previously stated, the undersigned respectfully recommends that Defendant’s Motion to Dismiss Plaintiffs’ First Amended Complaint be denied.

SO RECOMMENDED.

Signed: December 14, 2016



David S. Cayer
United States Magistrate Judge
